

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

CHAO FAN XU, *et al.*,

Defendants.

2:02-cr-00674-PMP-LRL

O R D E R

Before the court is defendant Chao Fan Xu's Motion for Transfer of Prisoners Pursuant to Treaty (#321), Joinders filed by defendants Ying Yi Yu and Wan Fang Kuang (##332,338), and the government's Opposition (#345).

Defendants request that the court order the government to bring witnesses incarcerated in the People's Republic of China to the United States to testify at trial. The basis for such request is the Agreement between the Government of the People's Republic of China and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters, which went into effect March 8, 2001 (the "Treaty"). (Exh. A to Opp'n (#345).) Specifically, defendants rely on Article 1 of the Treaty, which provides that the United States and China "shall provide mutual assistance in investigations, in prosecutions and in proceedings related to criminal matters," and that such assistance shall include, among other things, "transferring persons in custody for giving evidence or assisting in investigations" (*Id.* at 3.) It is Article 12 of the Treaty, however, that sets forth specific provisions for the transfer of persons in custody for the purpose of testimony and provides that such transfers will be made only if the person in custody consents to the transfer and if the central authorities of the United States and China agree to it. (*Id.* at 16.) The government has indicated that the Ministry of Justice of China has not agreed to the transfer. (Opp'n (#345) at 4.) Defendants have not disputed this. Hence,

1 the Treaty does not mandate or otherwise support the requested transfers.

2 Accordingly, and for good cause shown,

3 IT IS ORDERED that defendant Chao Fan Xu's Motion for Transfer of Prisoners Pursuant to
4 Treaty (#321) is DENIED.

5 DATED this 7th day of January, 2008.

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8 **LAWRENCE R. LEAVITT**
9 **UNITED STATES MAGISTRATE JUDGE**
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